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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Interconnection Between Local Exchange )  
Carriers and Commercial Mobile Radio )  
Service Providers )

CC Docket No. 95-185

REPLY COMMENTS OF  
WESTERN WIRELESS CORPORATION

Gene DeJordy, Esq.  
Christopher Johnson  
WESTERN WIRELESS CORPORATION  
330 120th Ave., N.E., Suite 200  
Bellevue, WA 98005  
(206) 635-0300

March 25, 1996

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## SUMMARY

Western Wireless and other CMRS providers established in their initial comments that, despite the Commission's mutual compensation requirement with regard to the exchange of traffic between LECs and CMRS providers, virtually all LECs refuse to compensate wireless providers for terminating calls originating on the landline network. CMRS providers are unable to obtain mutual compensation because they lack negotiating power *vis-a-vis* the LEC. Adoption of the Commission's bill and keep proposal will eliminate the negotiating advantage currently held by LECs and will moot concerns regarding LEC compliance with mutual compensation requirements.

Bill and keep is an appropriate, economically efficient interconnection model if: (1) traffic flow is roughly balanced; *or* (2) the actual costs of terminating traffic are low in relation to the transaction costs of measuring and charging for terminating traffic. Western concurs with the many commenters who demonstrate that bill and keep is an appropriate method of compensation for the exchange of traffic between competitive providers of local services under this test. At a minimum, bill and keep is appropriate as an interim compensation arrangement for the exchange of traffic until cost-based interconnection rates can be established. Interim bill and keep is especially appropriate for LEC-CMRS interconnection arrangements, given the overwhelming evidence submitted in this proceeding that LEC interconnection rates are grossly excessive, anti-competitive, and unreasonably discriminatory.

The Commission has the requisite jurisdiction over LEC-CMRS interconnection arrangements to require bill and keep reciprocal compensation. Even if the Commission concludes that the Telecommunications Act of 1996 ("1996 Act") governs LEC-CMRS interconnection arrangements, the Commission may lawfully require bill and keep for the exchange of traffic between LECs and CMRS providers as part of its implementing regulations under Section 251(d)(1).

In 1993, Congress amended Sections 2(b) and 332 of the Communications Act "to establish a Federal regulatory framework to govern the offering of commercial mobile services" which would "foster the growth and development of *mobile services* that, by their nature, *operate without regard to state lines* as an integral part of the national telecommunications infrastructure." Thus, Congress found CMRS to be interstate in nature. Under Section 2(a) of the Communications Act, the FCC has sole jurisdiction over "all interstate . . . communications by wire or radio." Accordingly, because Congress found CMRS to be inherently interstate, the FCC has jurisdiction to regulate LEC-CMRS interconnection.

Moreover, Section 332 preempts states from regulating entry or the rates charged by CMRS providers. As for interconnection rates, the Commission requires reciprocal compensation, which is also required by the 1996 Act. Under reciprocal compensation, charges are levied by LECs upon CMRS providers for terminating calls on the landline network and charges are levied by CMRS providers upon LECs for calls terminated on the CMRS network. Thus, the reciprocal compensation arrangements mandated by the Commission and the 1996 Act involve charges by CMRS providers. Thus, the Commission has exclusive jurisdiction pursuant to Section 332 of the Act to implement a bill and keep interconnection model, and may do so under Section 332 of the Act, on an interim basis until cost-based rates are established.

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In the Matter of	)	
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Interconnection Between Local Exchange	)	CC Docket No. 95-185
Carriers and Commercial Mobile Radio	)	
Service Providers	)	

To: The Commission

**REPLY COMMENTS**

Western Wireless Corporation ("Western Wireless") hereby replies to comments submitted in response to the Commission's *Notice of Proposed Rulemaking*, FCC 95-505 (Jan. 11, 1996), *summarized*, 61 Fed. Reg. 3644 (Feb. 1, 1996) ("*NPRM*") and *Order and Supplemental Notice of Proposed Rulemaking*, FCC 96-61 (Feb. 16, 1996), *summarized*, 61 Fed. Reg. 6961 (Feb. 23, 1996). In its comments, Western Wireless urged the Commission to adopt its tentative conclusions in this docket.<sup>1</sup> Western Wireless also established that the Commission has jurisdiction to adopt these proposals.<sup>2</sup> Western Wireless now responds to those commenters who claim that "bill and keep" would not be an economically efficient interconnection model and that, in any event, the FCC lacks jurisdiction to impose such a requirement.

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<sup>1</sup> The Commission tentatively concluded that: (1) bill and keep should be adopted, at least for an interim period, with regard to interconnection rates; (2) rates for dedicated transmission facilities connecting LEC and CMRS networks should be the same as those charged for similar transmission facilities; (3) interconnection arrangements should be made publicly available; and (4) CMRS providers should be entitled to recover access charges from interexchange carriers. *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, *Notice of Proposed Rulemaking*, FCC 95-505 (Jan. 11, 1996), 61 Fed. Reg. 3644 (Feb. 1, 1996).

<sup>2</sup> Western Wireless Comments at 18-21.

## **II. Compensation for Interconnected Traffic Between LECs and CMRS Providers' Networks**

### **A. Compensation Arrangements**

#### **1. Existing Compensation Arrangements**

Western Wireless established in its initial comments that, despite the Commission's mutual compensation requirement with regard to the exchange of traffic between LECs and CMRS providers,<sup>3</sup> virtually all LECs refuse to compensate wireless providers for terminating calls originating on the landline network.<sup>4</sup> A number of commenters concur with Western Wireless' assessment.<sup>5</sup> Additionally, a number of commenters note that LECs also charge CMRS providers excessive, anticompetitive, and unreasonably discriminatory rates for

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<sup>3</sup> See *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, FCC 87-163, *Declaratory Ruling*, 2 F.C.C.R. 2910, ¶ 45 (1987), *recon.* 4 F.C.C.R. 2369 (1989); see also *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Second Report and Order*, 9 F.C.C.R. 1411, 1497-98 (1994); 47 C.F.R. § 20.11(b).

<sup>4</sup> Western Wireless Comments at 13-14.

<sup>5</sup> See, e.g., Rural Cellular Corporation Comments at 3; Personal Communications Industry Association ("PCIA") Comments at 6; Vanguard Cellular Systems, Inc. ("Vanguard") Comments at 6; Centennial Cellular Corp. ("Centennial") Comments at 8-9; Cellular Mobile Systems of St. Cloud ("St. Cloud") Comments at 5; Rural Cellular Corp. Comments at 3, 5. See also *NPRM* at ¶¶ 26-27.

interconnection to the landline network,<sup>6</sup> and that certain LECs charge CMRS providers for originating traffic that terminates on the CMRS system.<sup>7</sup>

Western Wireless agrees with those commenters who note that CMRS providers are unable to obtain mutual compensation because they lack negotiating power *vis-a-vis* the LEC.<sup>8</sup> Because CMRS providers lack negotiating strength, they are unable to obtain information regarding the actual cost of interconnection or force LECs to comply with the mutual compensation requirements mandated by the Commission. Even if a CMRS provider were able to prevail upon a LEC to provide "mutual compensation," however, the LEC simply could increase its interconnection rate to subsidize its interconnection payments to the CMRS provider.<sup>9</sup> Adoption of the Commission's bill and keep proposal will eliminate the negotiating advantage currently held by LECs and will moot concerns regarding LEC compliance with mutual compensation requirements.

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<sup>6</sup> See Cellular Telecommunications Industry Association ("CTIA") Comments at 10; Sprint & APC Comments ("Joint Comments") at 11; Vanguard Comments at 11-12; Centennial Comments at 10.

<sup>7</sup> See CMT Partners ("CMT") Comments at 4; Joint Comments at 12; Centennial Comments at 8.

<sup>8</sup> See CTIA Comments at 8-9, 9-12; Joint Comments at 11; Vanguard at 6, 7-12; Omnipoint at 3.

<sup>9</sup> If a LEC is subsidizing its payments to a CMRS provider for interconnection, it is not compensating the CMRS provider. It is nonsensical to find that a LEC could satisfy the mutual compensation requirement simply by adding the charges imposed by a CMRS provider for interconnection onto the charges imposed by the LEC for interconnection. Without actual cost data, it is impossible for CMRS providers to determine whether they are really receiving mutual compensation.

## 2. General Pricing Principles

Comments are divided over the Commission's specific mutual compensation proposal — a bill and keep requirement. As one would expect, the comments generally follow industry lines. Broadband CMRS providers, as potential LEC competitors, support bill and keep.<sup>10</sup> Narrowband providers generally oppose bill and keep because they generally provide only one way service and, thus, would receive no benefit from a bill and keep system.<sup>11</sup> Finally, local exchange carriers oppose the Commission's proposal because it would eliminate their ability to use their monopoly power to extract supranormal interconnection rates from other telecommunications providers.<sup>12</sup>

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<sup>10</sup> See Comments of 360° Communications Company at 4-7; AirTouch at 9-21, 22-23; Alliance of Wireless Service Providers at 2-8; American Personal Communications at 7-14; AMTA at 5-7; AT&T at 5-19; Cellular Communications of Puerto Rico at 12-17; Cellular Mobile Systems of St. Cloud at 5-7; Centennial Cellular Corp. at 11-15; Century Cellunet at 4-8; CMT Partners at 7-8; Comcast at 8-23; Cox Enterprises at 2-5, 10-25, 30-35; CTIA at 7-42; Florida Cellular at 2-3; North Carolina 4 Cellular at 1-3; Omnipoint at 2-9, 15-16; PCIA at 7-11; Point Communications Company at 1-2; Rural Cellular Corp. at 4, 5-6; Southeast Telephone Limited Partnership at 1-2; Sprint Spectrum & APC at 19-27; Telecommunications Resellers Association at 6-11; Teleport Communications Group, Inc. at 4-13, 17; Vanguard Cellular at 3, 15-20; Western Wireless at 5-6, 16-17; Western Radio at 3-4. [reduce to broadband carriers only]

<sup>11</sup> See Arch Communications Group Comments at 11-14; CelPage Comments at 6-8; Paging Network, Inc. Comments at 23-29, 54; Westlink Comments at 16.

<sup>12</sup> See, e.g., Ameritech Comments at 5-11; Anchorage Telephone Utility Comments at 1-9; Bell Atlantic Comments at 6-13; BellSouth Comments at 3-13, 18-29; Cincinnati Bell Telephone Company Comments at 4-8; Concord Telephone Company Comments at 1-2; GTE Comments at 6-15, 25-39; Home Telephone Company Comments at 1-3; Illinois Telephone Association Comments at 1-2; NYNEX Comments at 3-9, 11-19; Pacific Bell Comments at 5-21, 24-26, 56-63, 78-86, 94; SBC Communications Comments at 6-12, 20, 26-28; U S West Comments at 24-53. States also opposed the Commission's

Bill and keep is an appropriate, economically efficient interconnection model, however, if: (1) traffic flow is roughly balanced; *or* (2) the actual costs of terminating traffic are low in relation to the transaction costs of measuring and charging for terminating traffic.<sup>13</sup> In addition, as the Commission has recognized, bill and keep is appropriate as an interim compensation arrangement for the exchange of traffic until cost-based interconnection rates can be established. Interim bill and keep is especially appropriate for LEC-CMRS interconnection arrangements, given the overwhelming evidence submitted in this proceeding that LEC interconnection rates are grossly excessive, anti-competitive, and unreasonably discriminatory.

**a. The Balance of LEC-CMRS Traffic Supports Bill and Keep Reciprocal Compensation**

Some LECs argue that bill and keep is not appropriate because the balance of LEC-CMRS traffic is not equal — LECs terminate more CMRS-originated traffic than *vice-versa*.<sup>14</sup> This approach to bill and keep is flawed. Although it is unclear what the actual balance of traffic is between CMRS providers and the LEC, recent trends indicate that the balance of LEC-CMRS

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proposal because it would limit their role in interconnection regulation. *See* California Public Utility Commission Comments at 11-13; NARUC Comments at 6-7; New York Department of Public Service Comments at 4-5, 7-12.

<sup>13</sup> *See* Brock Incremental Cost Paper at 2; Comcast Comments, CC Docket No. 94-54 (Sept. 12, 1994), Brock Interconnection Paper at 24.

<sup>14</sup> Ameritech Comments at 8-9; BellSouth Comments at 26; GTE Comments at 20-21; NYNEX Comments at 28, 32; USTA Comments at iii, 22 & n.20; U S West Comments at 48-49.



traffic is becoming more equal, if not already equal.<sup>15</sup> The actual balance of traffic will vary, however, depending upon the type of CMRS involved. Traffic patterns also vary depending upon whether the market involved is rural or urban. APC, for example, submitted evidence that traffic between its systems and LEC networks is roughly balanced.<sup>16</sup> Similarly, Cellular Mobile Systems of St. Cloud General Partnership asserts that it terminates roughly the same number of LEC-originated calls, as the LEC terminates calls originating on its network.<sup>17</sup> Finally, more and more CMRS systems are moving toward a "calling party pays" billing system which will create a more equal traffic balance.<sup>18</sup>

Even assuming traffic is not balanced, bill and keep still can be an economically efficient interconnection model. As CTIA notes, it is the *cost* of terminating traffic which determines whether an interconnection model is economically efficient.<sup>19</sup> Thus, bill and keep "can result in each carrier bearing essentially the same total cost to terminate traffic originating on other

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<sup>15</sup> See *NPRM* at ¶ 10 n.17; see also Centennial Comments at 10 n.17 ("The ratio of mobile to land vs. land to mobile calls in Centennial's cellular systems is approximately 85% to 15%"); Joint Comments at 2-3 (indicating that traffic is roughly balanced between PCS calls to the LEC and LEC calls to PCS subscribers); St Cloud Comments at 6 (indicating that it terminates roughly the same number of calls for LEC customers as the LEC terminates for St. Cloud subscribers).

<sup>16</sup> APC Comments at 2; Joint Comments at 2-3.

<sup>17</sup> St. Cloud Comments at 6. According to St. Cloud, "Residents of rural areas tend to spend more time in their vehicles than residents of urban areas [and, o]ften during the day, rural cellular subscribers can only be reached on their cellular phones." *Id.*

<sup>18</sup> See St. Cloud Comments at 6-7.

<sup>19</sup> CTIA Comments at 21-24.

networks, even where one carrier terminates more foreign traffic than the other.”<sup>20</sup> Western fully supports CTIA’s conclusion on this point — “termination costs for . . . two carriers may be equal where carrier A terminates more busy hour minutes of use than carrier B, but carrier B has proportionally higher costs for terminating traffic.”<sup>21</sup> Thus, the *costs* of terminating traffic between LECs and CMRS providers could be equal, even if the number of calls terminated by each carrier is not equal.

**b. LECs Incur Little or No Cost for Terminating CMRS Traffic**

Traffic between LECs and CMRS providers does not have to be fully balanced in order for bill and keep to make economic sense, provided the actual costs of terminating traffic are low in relation to the costs associated with billing for such traffic termination.

In this regard, Western Wireless refers to Comcast’s comments which show that the average incremental cost of terminating traffic at LEC end offices is low — as little as \$.002 per minute.<sup>22</sup> Despite this average cost, Comcast notes that Bell Atlantic charges it \$.025 per

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<sup>20</sup> CTIA Comments at 21-22.

<sup>21</sup> CTIA Comments at 23. It is ironic that bill and keep is widely used by LECs with regard to LEC-LEC interconnection. *See* Joint Comments at 10.

<sup>22</sup> *See* Comcast Comments at 10 (citing Bridger Mitchell, INCREMENTAL COSTS OF TELEPHONE ACCESS AND LOCAL USE (Santa Monica, Calif: The Rand Corp., 1990); *reprinted in* William Pollard, ed. MARGINAL COST TECHNIQUES FOR TELEPHONE SERVICES: SYMPOSIUM PROCEEDINGS, NRRI 91-6 (Columbus, Ohio: National Registry Research Institute, 1991) (“Incremental Costs Task Force Study”)); Joint Comments at 8 (referencing studies submitted by two LECs regarding actual interconnection cost).

minute, a profit of more than one thousand percent.<sup>23</sup> Similarly, Vanguard Cellular notes that New England Telephone Company ("NET") charges it \$.05 per minute, down from \$.27 per minute in 1988.<sup>24</sup> The Commission should prevent such excessive pricing and require the use of bill and keep. It should be without argument that a cost of \$.002 per minute "is low in relation to the administrative and technical costs associated with actually measuring and charging for the actual cost of terminating traffic."<sup>25</sup> Accordingly, bill and keep is an economically efficient interconnection model.

**c. Bill and Keep is the Most Appropriate Compensation Arrangement Until Cost-Based Rates are Established**

Many commenters, including Western Wireless, support adoption of bill and keep, at least on an interim basis, because it can be implemented immediately, with little or no administrative costs.<sup>26</sup> It is a system which is simple to follow and will minimize disputes.<sup>27</sup> It

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Vanguard indicates that the marginal interconnection cost for NET is \$.0057 per minute at peak hour. Vanguard Comments at 8; Centennial Comments at 13.

<sup>23</sup> Comcast Comments at 6. *Accord* Vanguard Comments at 11.

<sup>24</sup> Vanguard Comments at 8. *See* Joint Comments at 11 (noting interconnection charges of \$0.03).

<sup>25</sup> *See* Comcast Comments at 10.

<sup>26</sup> Joint Comments at 7; CMT Comments at 7; Rural Cellular Corp. Comments at 6..

<sup>27</sup> *See, e.g.*, Omnipoint Comments at 4; CMT Comments at 7; Rural Cellular Corp. Comments at 6; CTIA Comments at 31; Centennial Comments at 12.

avoids the current problem whereby LECs refuse to provide mutual compensation or raise interconnection rates to compensate for the money it must reimburse to CMRS providers terminating LEC-originated calls. Accordingly, an increasing number of states are ordering the use of bill and keep.<sup>28</sup>

Although a cost-based system may be the best long-term interconnection policy, there is very little evidence regarding the actual cost of interconnection and a cost-based system cannot be implemented until such information is obtained. Until actual cost information is obtained, bill and keep should be used. While the bill and keep system is being used, parties can compile information regarding actual traffic flow and cost data to be used in fashioning permanent interconnection requirements.<sup>29</sup> Once these traffic and cost figures are compiled the Commission can adopt permanent interconnection requirements which are cost-based.

## **B. Implementation of Compensation Arrangements**

### **2. Jurisdictional Issues**

The Commission has the requisite jurisdiction over LEC-CMRS interconnection arrangements to require bill and keep reciprocal compensation.<sup>30</sup> Even if the Commission

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<sup>28</sup> See Joint Comments at 10.

<sup>29</sup> Accord Centennial Comments at 12.

<sup>30</sup> See Cox Enterprises, Inc., *Ex Parte* Presentation in CC Docket No. 95-185 to William F. Caton, Acting Secretary, Federal Communications Commission, Feb. 28, 1996; AirTouch Communications, Inc. Comments at 43-55; 360° Communications Company Comments at 8; Allied PCIA/CA Comments at 12; APC Comments at 14; America's

concludes that the Telecommunications Act of 1996 ("1996 Act") governs LEC-CMRS interconnection arrangements, the Commission may lawfully require bill and keep for the exchange of traffic between LECs and CMRS providers as part of its implementing regulations under Section 251(d)(1).

In 1993, Congress amended Sections 2(b) and 332 of the Communications Act "to establish a Federal regulatory framework to govern the offering of commercial mobile services"<sup>31</sup> which would "foster the growth and development of *mobile services* that, by their nature, *operate without regard to state lines* as an integral part of the national telecommunications infrastructure."<sup>32</sup> Thus, Congress found CMRS to be interstate in nature. As Comcast states, CMRS has been "federalized" by the Budget Act and are interstate services.<sup>33</sup>

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Carrier's Telecommunications Association Comments at II.B.2., pp. 1-3; AMTA Comments at 8; AT&T Comments at 19-30; Cellular Communications Company of Puerto Rico Comments at 19-20; St. Cloud Comments at 14-15; Celpage Comments at 9-11; Centennial Comments at 27-33; Century Cellunet Comments at 10-16; Comcast Comments at 24-25, 26-47; Cox Enterprises Comments at 35-47; CTIA Comments at \_\_; Florida Cellular Comments at 3-4; New Par Comments at 23-25; Omnipoint Comments at 10-15; Paging Network, Inc. Comments at 29-38; PCIA Comments at 15-27; Rural Cellular Corp. Comments at 12-13; Sprint Corp. Comments at 14-15; Joint Comments at 36-51; Teleport Communications Group, Inc. Comments at 24-25; Time Warner Comments at 24-31; Vanguard Comments at 23-26.

<sup>31</sup> H.R. Conf. Rep. No. 103-213, 103d Cong. 1st Sess. 490 (1993).

<sup>32</sup> H.R. Rep. No. 103-111, 103d Cong. 1st Sess. 260 (1993) (emphasis added).

<sup>33</sup> Comcast Comments at 29.

Under Section 2(a) of the Communications Act, the FCC has sole jurisdiction over “all interstate . . . communications by wire or radio.”<sup>34</sup> Thus, because Congress found CMRS to be inherently interstate, the FCC has jurisdiction to regulate LEC-CMRS interconnection.

Some parties argue that the Commission’s jurisdiction with regard to LEC-CMRS interconnection is limited by Section 2(b) which states that “nothing in this act shall be construed to apply or to give the Commission jurisdiction with respect to [] charges, classifications, practices, services, facilities, for or in connection with intrastate communication service by wire or radio.”<sup>35</sup> Section 2(b), however, also states that it does not apply to services governed by Section 332.<sup>36</sup>

Section 332 preempts states from regulating entry or the rates charged by CMRS providers.<sup>37</sup> The Commission currently requires interconnecting carriers to enter into mutual compensation arrangements and the 1996 Act mandates reciprocal compensation. Both of these compensation arrangements contemplate charges levied by LECs upon CMRS providers for terminating calls on the landline network and *charges levied by CMRS providers upon LECs* for calls terminated on the CMRS network. Thus, the reciprocal compensation arrangements mandated by the Commission and the 1996 Act involve charges by CMRS providers and,

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<sup>34</sup> 47 U.S.C. § 152(a).

<sup>35</sup> 47 U.S.C. § 152(b).

<sup>36</sup> 47 U.S.C. § 152(b).

<sup>37</sup> 47 U.S.C. § 332(c)(3).

therefore, the Commission has exclusive jurisdiction pursuant to Section 332, or, at a minimum, pursuant to its implementing regulations to mandate bill and keep on an interim basis until cost-based interconnection rates are established.

Further, interconnection was a central element of the Budget Act<sup>38</sup> and Section 332 gives the Commission sole authority to order a common carrier to establish interconnection with a CMRS provider pursuant to Section 201 of the Act.<sup>39</sup> Thus, Section 332 provides for no state role with regard to a CMRS provider seeking interconnection with another common carrier. In fact, some states have been reluctant to impose a separate mutual compensation requirement on LEC-CMRS interconnection for lack of jurisdiction.<sup>40</sup>

Western Wireless concurs with CTIA, that the 1996 Act also favors mutual compensation.<sup>41</sup> Congress, in recognition of the disparity in market power between LECs and other telecommunications providers, *mandated* mutual compensation.<sup>42</sup> As a result of the 1996

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<sup>38</sup> See H.R. Rep. No. 103-111 at 261 ("The Committee considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network.").

<sup>39</sup> 47 U.S.C. § 332(c)(1)(B).

<sup>40</sup> "In the *absence of authority* to impose local service obligations and responsibilities *on wireless carriers*, the Department will not extend the benefit of mutual compensation to such carriers." *DPUC Investigation Into Wireless Mutual Compensation Plans*, State of Connecticut, Department of Public Utility Control, Docket No. 95-04-04 (Sept. 22, 1995).

<sup>41</sup> CTIA Comments at 46. *Accord* Omnipoint at 5.

<sup>42</sup> See 47 U.S.C. §§ 251(b)(5), 252(d)(2)(A), 252(d)(2)(B)(i).

Act, the Communications Act now imposes on local exchange carriers the “*duty* to establish reciprocal compensation arrangements for the transport and termination of telecommunications.”<sup>43</sup> As the General Services Administration states: “The Act requires that each carrier be compensated for the costs it incurs for transporting and terminating calls. . . . [T]his virtually requires ‘bill and keep,’ an arrangement explicitly permitted by the Act.”<sup>44</sup>

Some commenters argue, however, that the 1996 Act requires only good faith negotiations.<sup>45</sup> This simply is not true. The 1996 Act, first and foremost, mandates mutual compensation.<sup>46</sup> The duty to negotiate in good faith is *in addition* to the duty to establish mutual compensation. In essence, a party wishing to interconnect with a LEC is *entitled* to mutual compensation but may engage in voluntary negotiations with the LEC for an *alternative* arrangement which is mutually agreeable to both parties.

As part of its implementing authority, the Commission may lawfully require bill and keep reciprocal compensation until cost-based rates are established. This interim step is absolutely necessary to protect CMRS providers from grossly excessive, anticompetitive, and unreasonably discriminatory rates. This is precisely the step that state commissions have taken for LEC to LEC interconnection. Now, the Commission must do the same for LEC to CMRS interconnection.

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<sup>43</sup> 47 U.S.C. § 251(b)(5). See Rural Cellular Corporation Comments at 3.

<sup>44</sup> GSA Comments at 8.

<sup>45</sup> See, e.g., BellSouth Comments at 4-7; U S West Comments at 28-29; GTE Comments at 6-10; Ameritech Comments at 11.

<sup>46</sup> 47 U.S.C. § 251(b)(5).



## VI. Other

LECs argue that bill and keep should not be adopted because it would constitute an unlawful “taking” of LEC property.<sup>47</sup> This simply is not true. As the Washington Utilities and Transportation Commission found:

It is simply wrong to suggest that the bill and keep procedure means that calls are being terminated for “free.” The termination function is paid for not by the originating company, but by the end-use customer in his flat monthly charge. That charge covers all access to and from the public switched network. Under bill and keep, a company is fully compensated by its own customer.<sup>48</sup>

LECs “remain free to recover *all* of the costs of terminating calls from their customers, who receive the benefit of the terminated calls.”<sup>49</sup> In fact, many LECs already recover call termination costs from their subscribers<sup>50</sup> and, thus, double bill for LEC-to-CMRS calls. Accordingly, there is no “taking” of LEC property.

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<sup>47</sup> BellSouth Comments at 18-20; GTE Comments at 13-14; U S West Comments at 49-53.

<sup>48</sup> *Washington Utilities and Transportation Commission v. U.S. West, Inc.*, Docket Nos. UT-941464, *et al.* (Oct. 31, 1995). *Accord* CMT Comments at 7; Joint Comments at 20, 27; Centennial Comments at 12-15.

<sup>49</sup> Joint Comments at 27. *See NPRM* at ¶ 60.

<sup>50</sup> Vanguard Comments at 16 n.36 (citing *Washington Utilities and Transportation Commission v. U.S. West Communications, Inc.*, Docket Nos. UT-941464 *et al.*, at 35-36) (emphasis in original).

Western Wireless Corporation  
Reply Comments  
March 25, 1996


### **CONCLUSION**

For the reasons discussed above, Western Wireless urges the Commission to adopt its bill and keep proposal without delay.

Respectfully submitted,

**WESTERN WIRELESS CORPORATION**

By:

  
Gene DeJordy, Esq.  
Christopher Johnson  
Western Wireless Corporation  
330 120th Ave., N.E., Suite 200  
Bellevue, Washington 98005  
(206) 635-0300

March 25, 1996

## CERTIFICATE OF SERVICE

I, Phyllis Martin, hereby certify that copies of the foregoing Reply Comments of Western Wireless Corporation in CC Docket No. 95-185 have been served this 25th day of March, 1996, by first-class United States mail, postage prepaid, on the following parties listed on the attached list.

- |  |   |
|--|---|
| <ul style="list-style-type: none"><li>* Chairman Reed E. Hundt<br/>Federal Communications Commission<br/>Room 814<br/>1919 M Street, N.W.<br/>Washington, DC 20554</li><li>* Commissioner James H. Quello<br/>Federal Communications Commission<br/>Room 802<br/>1919 M Street, N.W.<br/>Washington, DC 20554</li><li>* Commissioner Andrew C. Barrett<br/>Federal Communications Commission<br/>Room 826<br/>1919 M Street, N.W.<br/>Washington, DC 20554</li><li>* Commissioner Rachelle Chong<br/>Federal Communications Commission<br/>Room 826<br/>1919 M Street, N.W.<br/>Washington, DC 20554</li><li>* Commissioner Susan Ness<br/>Federal Communications Commission<br/>Room 832<br/>1919 M Street, N.W.<br/>Washington, DC 20054</li></ul> | <ul style="list-style-type: none"><li>* Michele C. Farquhar<br/>Chief, Wireless Telecommunications<br/>Bureau<br/>Federal Communications Commission<br/>Room 5002<br/>2025 M Street, N.W.<br/>Washington, DC 20554</li><li>* Rosalind K. Allen<br/>Associate Bureau Chief<br/>Wireless Telecommunications Bureau<br/>Federal Communications Commission<br/>Room 5002<br/>2025 M Street, N.W.<br/>Washington, DC 20554</li><li>* Regina Keeney<br/>Chief<br/>Common Carrier Bureau<br/>Room 500<br/>1919 M Street, N.W.<br/>Washington, DC 20554</li><li>* Richard K. Welch<br/>Chief, Policy Division<br/>Federal Communications Commission<br/>Room 544<br/>1919 M Street, N.W.<br/>Washington, DC 20554</li></ul> |
|--|---|

\* Hand-Served

\* Jim Schlichting  
Chief, Tariff Division  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

International Transcription Services, Inc.  
Suite 140  
2100 M Street, N.W.  
Washington, DC 20037

**360° COMMUNICATIONS COMPANY**  
Kevin C. Gallagher  
Senior Vice President-General Counsel  
and Secretary  
360° Communications Company  
8725 Higgins Road  
Chicago, IL 60631

**AIRTOUCH COMMUNICATIONS, INC.**  
David A. Gross  
Kathleen Q. Abernathy  
AirTouch Communications, Inc.  
Suite 800  
1818 N Street, N.W.  
Washington, DC 20036

**AIRTOUCH COMMUNICATIONS, INC.**  
Michael Mowery  
Pamela Riley  
AirTouch Communications, Inc.  
One California Street  
San Francisco, CA 94105

**ALASKA TELEPHONE ASSOCIATION**  
James Rowe  
Executive Director  
Alaska Telephone Association  
Suite 304  
4341 B Street  
Anchorage, AK 99503

**ALASKA 3 CELLULAR CORPORATION D/B/A  
CELLULARONE**  
Richard S. Myers  
Myers Keller Communications Law Group  
Suite 908  
1030 15th Street, N.W.  
Washington, DC 20005

**ALLIANCE OF WIRELESS SERVICES  
PROVIDERS**  
David L. Nace  
Lukas, McGowan, Nace & Gutierrez, Chtd.  
12th Floor  
1111 19th Street, N.W.  
Washington, DC 20036

**ALLIED PERSONAL COMMUNICATIONS  
INDUSTRY ASSOCIATION OF CALIFORNIA**  
David M. Wilson, Esq.  
Young, Vogl, Harlick, Wilson & Simpson,  
L.L.P.  
Suite 2500  
425 California Street  
San Francisco, CA 94104

**ALLTEL CORPORATION**  
Glenn S. Rabin, Federal Regulatory Counsel  
ALLTEL Corporate Services, Inc.  
Suite 220  
655 15th Street, N.W.  
Washington, DC 20005

**AMERICA'S CARRIERS  
TELECOMMUNICATIONS ASSOCIATION**  
Charles H. Helein  
Helein & Associates, P.C.  
Suite 700  
8180 Greensboro Drive  
McLean, VA 22102

\* Hand-Served

**AMERICAN PERSONAL COMMUNICATIONS**

Anne Schelle, Vice President, External  
Affairs  
American Personal Communications  
Suite 600  
6901 Rockledge Drive  
Bethesda, MD 20817

**AMERICAN MOBILE****TELECOMMUNICATIONS ASSOCIATION,  
INC.**

Alan R. Shark  
President  
Elizabeth R. Sachs, Esq.  
Lukas, McGowan, Nace & Gutierrez  
Suite 1200  
1111 19th Street, N.W.  
Washington, DC 20036

**AMERICAN PERSONAL COMMUNICATIONS**

Jeffrey S. Linder  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, DC 20006

**AMERITECH**

Frank Michael Panek  
Room 4H84  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60196-1025

**ANCHORAGE TELEPHONE UTILITY**

James A. Crary  
Senior Attorney  
600 Telephone Avenue  
Anchorage, AK 99503

**ARCH COMMUNICATIONS GROUP, INC.**

Carl W. Northrop  
Christine M. Crowe  
Paul Hastings  
Janofsky &  
Walker  
10th Floor  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004

**AT&T CORP.**

Mark C. Rosenblum  
Judy Sello  
Room 3244J1  
295 North Maple Avenue  
Basking Ridge, NJ 07920

**AT&T CORP.**

Scott K. Morris  
Cathleen A. Massey  
AT&T Wireless Services, Inc.  
4th Floor  
1150 Connecticut Avenue, N.W.  
Washington, DC 20036

**AT&T CORP.**

Howard J. Symons  
Sara F. Seidman  
Charon J. Harris  
Mintz, Levin, Cohn, Ferris Glovsky &  
Popeo, P.C.  
Suite 900  
701 Pennsylvania Avenue, N.W.  
Washington, DC 20004

**BELL ATLANTIC NYNEX MOBILE, INC.**

John T. Scott, III  
Crowell & Moring  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2595

**BELL ATLANTIC**

James G. Pachulski  
Eighth Floor  
1320 North Court House Road  
Arlington, VA 22201

**BELLSOUTH CORPORATION**

John F. Beasley  
William B. Barfield  
Jim O. Llewellyn  
Suite 1800  
1155 Peachtree Street, N.E.  
Atlanta, GA 30309-2641

**BELLSOUTH CORPORATION**

Charles P. Featherstun  
David G. Richards  
1133 21st Street, N.W.  
Washington, DC 20036

**CELLULAR TELECOMMUNICATIONS  
INDUSTRY ASSOCIATION**

Philip L. Verveer  
Jenifer A. Donaldson  
Michael G. Jones  
Thomas Jones  
Willkie Farr & Gallagher  
Suite 600  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20036-3384

**CELLULAR COMMUNICATIONS OF PUERTO  
RICO, INC.**

Jay L. Birnbaum  
David H. Pawlik  
Skadden, Arps, Slate, Meagher & Flom  
1440 New York Avenue, N.W.  
Washington, DC 20005

**CELLULAR MOBILE SYSTEMS OF ST.  
CLOUD GENERAL PARTNERSHIP**

Michael R. Bennet  
Caressa D. Bennet  
Bennet & Bennet, PLLC  
Suite 200  
1831 Ontario Place, N.W.  
Washington, DC 20009

**CELLULAR RESELLERS ASSOCIATION, INC.**

Lewis J. Paper  
David B. Jeppsen  
Dickstein, Shapiro & Morin, L.L.P.  
2101 L Street, N.W.  
Washington, DC 20037-1526

**CELLULAR TELECOMMUNICATIONS  
INDUSTRY ASSOCIATION**

Michael F. Altschul  
Vice President, General Counsel  
Randall S. Coleman  
Vice President for Regulatory Policy and  
Law  
Cellular Telecommunications Industry  
Association  
Suite 200  
1250 Connecticut Avenue, N.W.  
Washington, DC 20036

**CELPAGE, INC.**

Frederick M. Joyce  
Amy Brett  
Joyce & Jacobs, Attys. at Law, LLP  
14th Floor, PH-2  
1019 19th Street, N.W.  
Washington, DC 20036

**CENTENNIAL CELLULAR CORP.**

Richard Rubin  
Steven N. Teplitz  
Fleishman and Walsh, L.L.P.  
Suite 600  
1400 16th Street  
Washington, DC 20036

**CENTURY CELLUNET, INC.**

Susan W. Smith, Director, External Affairs  
Century Cellunet, Inc.  
#4  
3050 Summerhill  
Texarkana, TX 75501

**CINCINNATI BELL TELEPHONE COMPANY**

William D. Baskett, III  
Thomas E. Taylor  
David S. Bence  
Frost & Jacobs  
2500 PNC Center  
201 East Fifth Street  
Cincinnati, OH 45201-5715

**CMT PARTNERS**

Thomas Gutierrez  
Lukas, McGowan, Nace & Gutierrez,  
Chartered  
Suite 1200  
1111 Nineteenth Street, N.W.  
Washington, DC 20036

**CMT PARTNERS**

Adam A. Andersen  
Senior Counsel  
CMT Partners  
15th Floor  
651 Gateway Boulevard  
South San Francisco, CA 94080

**COMCAST CORPORATION**

Leonard J. Kennedy  
Laura H. Phillips  
Peter A. Batacan  
Dow, Lohnes & Albertson  
Suite 800  
1200 New Hampshire Avenue, N.W.  
Washington, DC 20036-6802

**CONCORD TELEPHONE COMPANY**

Barry R. Rubens, Senior Vice President  
Concord Telephone Company  
68 Cabarrus Avenue East  
Concord, NC 28026-0227

**CONNECTICUT DEPARTMENT OF PUBLIC  
UTILITY CONTROL**

Reginald J. Smith, Chairperson  
Connecticut Department of Public Utility  
Control  
One Central Park Plaza  
New Britain, CT 06051

**COX ENTERPRISES, INC.**

Werner K. Hartenberger  
Laura H. Phillips  
Richard S. Denning  
Christina H. Burrow  
Dow, Lohnes & Albertson  
Suite 800  
1200 New Hampshire Avenue, N.W.  
Washington, DC 20036-6802

**FLORIDA CELLULAR RSA LIMITED  
PARTNERSHIP**

David L. Hill  
Audrey P. Rasmussen  
O'Connor & Hannan, L.L.P.  
Suite 800  
1919 Pennsylvania Avenue, N.W.  
Washington, DC 20006-3483

**FRONTIER CORPORATION**

Michael J. Shortley, III  
180 South Clinton Avenue  
Rochester, NY 14646

**GENERAL SERVICES ADMINISTRATION**

Emily C. Hewitt  
Vincent L. Crivella  
Michael J. Ettner  
Jody B. Burton  
General Services Administration  
Room 4002  
18th & F Streets, N.W.  
Washington, DC 20405

**GO COMMUNICATIONS**

John A. Malloy  
General Counsel  
GO Communications  
Suite 410  
201 N. Union Street  
Alexandria, VA 22314-2642

**GTE SERVICE CORPORATION**

Richard McKenna, HQE03J36  
GTE Service Corporation  
P. O. Box 152092  
Irving, TX 75015-2092

**GTE SERVICE CORPORATION**

Andre J. Lachance  
Suite 1200  
1850 M Street, N.W.  
Washington, DC 20036

**GTE SERVICE CORPORATION**

Gail L. Polivy  
Suite 1200  
1850 M Street, N.W.  
Washington, DC 20036

**HART ENGINEERS AND 21ST CENTURY  
TELESIS, INC.**

Robert A. Hart, IV  
Hart Engineers  
4615 North Boulevard  
Baton Rouge, LA 70806

**HOME TELEPHONE COMPANY, INC.**

Michael S. Fox, Director, Regulatory Affairs  
John Staurulakis, Inc.  
6315 Seabrook Road  
Seabrook, MD 20706

**ICO GLOBAL COMMUNICATIONS**

Cheryl A. Tritt  
Stephen J. Kim  
Morrison & Foerster, L.L.P.  
Suite 5500  
2000 Pennsylvania Avenue, N.W.  
Washington, DC 20006

**ILLINOIS TELEPHONE ASSOCIATION**

John F. Tharp, Executive Vice President  
Illinois Telephone Association  
P. O. Box 730  
300 East Monroe Street  
Springfield, IL 62705

**JOHN STAURULAKIS, INC.**

Michael S. Fox, Director, Regulatory Affairs  
John Staurulakis, Inc.  
6315 Seabrook Road  
Seabrook, MD 20706

**LDDS WORLD COM**

Catherine R. Sloan  
Richard L. Fruchterman  
Richard S. Whitt  
Worldcom, Inc.  
d/b/a/ LDDS WorldCom  
Suite 400  
1120 Connecticut Avenue, N.W.  
Washington, DC 20036

**MCI TELECOMMUNICATIONS  
CORPORATION**

Larry A. Blosser  
Donald J. Elardo  
1801 Pennsylvania Avenue, N.W.  
Washington, DC 20006

**NATIONAL TELEPHONE COOPERATIVE  
ASSOCIATION**

David Cosson  
L. Marie Guillory  
Steven Watkins  
2626 Pennsylvania Avenue, N.W.  
Washington, DC 20037

**NATIONAL ASSOCIATION OF REGULATORY  
UTILITY COMMISSIONERS**

Paul Rodgers  
Charles D. Gray  
James Bradford Ramsay  
National Association of Regulatory Utility  
Commissioners  
1102 ICC Building  
Post Office Box 684  
Washington, DC 20044

**NATIONAL EXCHANGE CARRIER  
ASSOCIATION, INC.**

Richard A. Askoff  
Lisa L. Leibow  
National Exchange Carrier Association, Inc.  
100 South Jefferson Road  
Whippany, NJ 07981



**NEW PAR**

Jay L. Birnbaum  
Jeffrey A. Brueggeman  
Skadden, Arps, Slate, Meagher & Flom  
1440 New York Avenue, N.W.  
Washington, DC 20005

**NEW YORK STATE DEPARTMENT OF  
PUBLIC SERVICE**

Maureen O. Helmer  
General Counsel  
New York State Department of Public  
Service  
Three Empire State Plaza  
Albany, NY 12223-1350

**NORTH CAROLINA 4 CELLULAR LIMITED  
PARTNERSHIP**

Jeanne M. Walsh  
Kurtis & Associates, P.C.  
Suite 600  
2000 M Street, N.W.  
Washington, DC 20036

**NYNEX COMPANIES**

Saul Fisher  
Donald C. Rowe  
NYNEX Companies  
1111 Westchester Avenue  
White Plains, NY 10604

**OMNIPONT CORPORATION**

Mark J. Tauber  
Mark J. O'Connor  
Piper & Marbury, L.L.P.  
Seventh Floor  
1200 19th Street, N.W.  
Washington, DC 20036

**ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL  
TELECOMMUNICATIONS COMPANIES**

Lisa M. Zaina  
Ken Johnson  
OPASTO  
21 Dupont Circle, N.W.  
Washington, DC 20036

**PACIFIC BELL, PACIFIC BELL MOBILE  
SERVICES AND NEVADA BELL**

Margaret E. Garber  
1275 Pennsylvania Avenue, N.W.  
Washington, DC 20004

**PACIFIC COMMUNICATION SCIENCES, INC.**

Steven Sivitz  
PCS Business Development  
9645 Scranton Road  
San Diego, CA 92121

**PACIFIC BELL, PACIFIC BELL MOBILE  
SERVICES AND NEVADA BELL**

Lucille M. Mates  
Jeffrey B. Thomas  
Sarah Rubenstein  
Room 1529  
140 New Montgomery Street  
San Francisco, CA 94105

**PAGING NETWORK, INC.**

Judith St. Ledger-Roty  
Jonathan E. Canis  
Paul G. Madison  
Reed Smith Shaw & McClay  
Suite 1100 - East Tower  
1301 K Street, N.W.  
Washington, DC 20005

**PEOPLE OF THE STATE OF CALIFORNIA  
AND THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Peter Arth, Jr.  
Edward W. O'Neill  
Mary Mack Adu  
505 Van Ness Avenue  
San Francisco, CA 94102